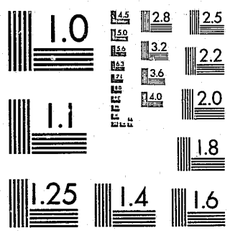

THE OFFICE OF WISCONSIN DISTRICT ATTORNEY AND COMPARISON OF STATE PROSECUTORIAL SYSTEMS

RESEARCH BULLETIN 82-5

Wisconsin Legislative Council Staff
July 13, 1982

State Capitol
Madison, Wisconsin

RB 82-5

TABLE OF CONTENTS

Page

INTRODUCTION 1

PART I - DESCRIPTION OF THE NATURE AND FUNCTIONS OF THE OFFICE OF WISCONSIN DISTRICT ATTORNEY 3

A. NATURE AND PURPOSE OF OFFICE 3

B. ELIGIBILITY AND QUALIFICATIONS 4

C. ELECTION OR APPOINTMENT TO OFFICE; TERM OF OFFICE . . . 4

D. REMOVAL, SUSPENSION OR RECALL FROM OFFICE 7

E. COMPENSATION AND EXPENSES 8

F. DUTIES OF DISTRICT ATTORNEY 11

G. RESTRICTIONS ON ACTIVITIES OF DISTRICT ATTORNEY 15

H. ASSISTANT AND DEPUTY DISTRICT ATTORNEYS; OTHER SUPPORT STAFF 18

I. ROLE OF COUNTY CORPORATION COUNSEL 21

J. ROLE OF THE DEPARTMENT OF JUSTICE 23

PART II - COMPARISON OF STATE PROSECUTORIAL SYSTEMS 27

A. INTRODUCTION 27

B. CENTRAL ADMINISTRATION STATES 31

C. REGULATORY SYSTEM STATES 32

D. DECENTRALIZED COLLEGIAL SYSTEM STATES 34

PART III - NATIONAL STUDIES OF PROSECUTORIAL SYSTEMS 37

A. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT 37

B. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 37

C. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE 38

D. AMERICAN BAR ASSOCIATION 38

TABLE OF CONTENTS (continued)

	Page
E. NATIONAL ASSOCIATION OF ATTORNEYS GENERAL	39
F. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS	40
G. COMMITTEE FOR ECONOMIC DEVELOPMENT	41
H. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS	42
I. NATIONAL DISTRICT ATTORNEYS ASSOCIATION	42
APPENDICES - INDIVIDUAL STATE DESCRIPTIONS	43
APPENDIX A: ALASKA - CENTRAL	45
APPENDIX B: FLORIDA - REGULATORY	47
CONNECTICUT - REGULATORY	49
APPENDIX C: OKLAHOMA - DECENTRALIZED COLLEGIAL	51
OREGON - DECENTRALIZED COLLEGIAL	53

Legislative Council Staff

Madison, Wisconsin
July 13, 1982

RESEARCH BULLETIN 82-5*

THE OFFICE OF WISCONSIN DISTRICT ATTORNEY AND COMPARISON OF STATE PROSECUTORIAL SYSTEMS

INTRODUCTION

At its May 27, 1982 meeting, the Legislative Council established the Special Committee on the Prosecutorial System to study the effectiveness of the current district attorney prosecutorial system in Wisconsin.

The purpose of this Research Bulletin is to provide background information to the Special Committee on the office of district attorney in Wisconsin and a comparison of state prosecutorial systems. Also, major national studies on state prosecutorial systems are summarized. The Bulletin does not draw any independent conclusions nor does it suggest specific changes in Wisconsin's prosecutorial system.

This Research Bulletin is divided into three parts:

PART I describes the nature and functions of the office of district attorney in Wisconsin.

PART II compares state prosecutorial systems.

PART III summarizes national studies on state prosecutorial systems.

In addition, the Appendices contain descriptions of states which represent various types of prosecutorial systems.

---

*This Research Bulletin was prepared by Don Dyke, Staff Attorney, Don Salm, Staff Attorney, and Shaun Haas, Senior Staff Attorney, Legislative Council Staff.

PART I

DESCRIPTION OF THE NATURE AND FUNCTIONS OF THE OFFICE OF WISCONSIN DISTRICT ATTORNEY

A. NATURE AND PURPOSE OF OFFICE

The district attorney in Wisconsin is an elected county officer who, in general, has the responsibility of prosecuting and defending all civil or criminal actions in the courts of his or her county in which the state or county is a party or is interested [s. 59.47, Stats.].

The office of district attorney is a constitutional office. The Wisconsin Constitution, art. VI, s. 4, provides that "district attorneys...shall be chosen by the electors of the respective counties once in every two years." The Wisconsin Constitution does not specify the duties and functions of the district attorney. The numerous duties and functions of the office are set forth in various sections of the state statutes, which are discussed in Section F of this Research Bulletin.

Although the Wisconsin Constitution does not specify the duties of the district attorney, parties in several Wisconsin Supreme Court cases have contended that the district attorney has certain implied constitutional powers and duties and that the State Constitution conferred on the district attorney those generally recognized duties belonging to the office at the time of the adoption of the Constitution. [See, e.g., Jessner v. State, 202 Wis. 184, 231 N.W. 634 (1930).] This contention has been consistently rejected by the Court. As the Court noted in State ex rel. Kurkierewicz v. Cannon, 42 Wis. 2d 368, 380, 166 N.W. 2d 255, 260 (1969):

> ...[W]here the legislature has spoken and directed the performance of duties under particular facts, the district attorney is obligated to comply with the legislative mandate. Only if the direction of the legislature transgresses a constitutional prohibition will the courts conclude that the district attorney's prerogatives in the judicial system supersede his obligation to the representatives of the people.
>
> ...
>
> [In a prior opinion, this Court] concluded that the position of district attorney, though constitutional, was not one of inherent powers, but

> was answerable to the specific directions of the legislature. It appears settled, therefore, in Wisconsin at least, that the prosecutor is subject to the enactments of the legislature. [Emphasis added.]

B. ELIGIBILITY AND QUALIFICATIONS

1. County Resident

Under current law, a person is not eligible to become a candidate for county elective office, including the office of district attorney, unless the person is a resident of the county at the time of filing nomination papers [s. 59.125, Stats.].

2. Lawyer

A district attorney must be a lawyer licensed to practice law in the State of Wisconsin. Although there is no specific statute requiring district attorneys to be lawyers, the Wisconsin Supreme Court has held that this qualification is "inherent in the office itself, and required by the duties to be performed by [the district attorney]" [State v. Russell, 83 Wis. 330, 332 (1892)]. All attorneys practicing law in the State of Wisconsin must be members of the State Bar of Wisconsin [s. 758.25 (1), Stats.].

C. ELECTION OR APPOINTMENT TO OFFICE; TERM OF OFFICE

1. Election and Term of Office

As noted above, the Wisconsin Constitution requires the electors of each county to elect a district attorney once in every two years [art. VI, s. 4, Wis. Const.].

Under current law, the office of district attorney is a partisan office. A district attorney is elected in each county at the general election held in each even-numbered year. The regular term of office of the district attorney commences on the first Monday of the January following his or her election and continues for two years "and until his successor qualifies" [s. 59.12, Stats.].

2. Existing Offices

There are currently 71 full-time or "part-time" district attorneys in the state. The only county which does not have its own district attorney is Menominee County, which is attached to Shawano County "for judicial purposes to the extent of the office and functions of the district attorney." The district attorney of Shawano County is required to serve as district attorney for Menominee County and no district attorney may be elected in Menominee County, "the county not being organized for that purpose" [s. 59.475, Stats.].

As to the designation of district attorneys as full-time or part-time, the Attorney General has noted:

> Wisconsin does not have "part-time district attorneys." As [I] stated in [a prior opinion]:
>
> "District attorney...is a full-time office in the sense that the incumbent is an officer during every hour of his term and the duties and responsibilities imposed by the legislature, if diligently pursued, would occupy most or all of the time an officer could reasonably devote to the office even in lesser populated counties. Historically, district attorneys have been permitted to practice law privately in smaller counties. This was almost a necessity in some cases in view of the low compensation provided by the county...."
>
> A more accurate designation of status, rather than "full-time" or "part-time" would be "is permitted to practice law privately" and "is not permitted to practice law privately" [67 OAG 31, 36-37 (1978)].

3. Appointment By Governor Where Vacancy

The Wisconsin Constitution provides that all vacancies in elective county offices are to be filled by appointment, and the person appointed to fill a vacancy may hold the office only for the unexpired portion of the term to which he or she is appointed and "until his successor shall be elected and qualified" [art. VI, s. 4, Wis. Const.].

Under current law, a vacancy in the office of district attorney is to be filled by an appointment by the Governor for the residue of the unexpired term [s. 17.21, Stats.]. Section 17.03, Stats., lists those

events which result in a public office becoming or being deemed vacant (e.g., the death, resignation, removal or felony conviction of the incumbent).

4. Acting District Attorney; Appointment By Judge

Under current law, any judge of any court of record may appoint a suitable person to perform the duties of the district attorney if:

a. There is no district attorney for the county;

b. The district attorney is absent from the county;

c. The district attorney has acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged and for which the accused is to be tried;

d. The district attorney is near of kin to the party to be tried on a criminal charge;

e. The district attorney is unable to attend to his or her duties or is serving in the armed forces of the United States; or

f. The district attorney stands charged with a crime and the Governor has not acted to suspend him or her under s. 17.11, Stats. (see Part IV, B, below).

Current law provides that the person appointed as acting district attorney has all the powers of the district attorney while so acting [s. 59.44 (1), Stats.].

The amount of compensation of the acting district attorney is to be set by the court and must be in an amount "as is customarily charged by attorneys of this state for comparable services." The court must also provide for repayment of the acting district attorney's disbursements in such sum as the court deems proper [s. 59.44 (4), Stats.].

5. Official Oath and Bond

Under current law, a district attorney must execute and file an official bond in the amount of $1,000 and take and file the official oath within 20 days after receiving official notice of election or appointment. If not officially notified, a district attorney must take these actions within 20 days after the commencement of the term for which he or she was elected or appointed. The oath and bond must be filed in the office of

the county clerk [ss. 19.01 (4) (d) and 59.13 (1) (intro.) and (f), Stats.].

D. REMOVAL, SUSPENSION OR RECALL FROM OFFICE

1. Removal

The Wisconsin Constitution provides that the Governor may remove from office, among other county officers, a district attorney. The Constitution requires the Governor to give the district attorney "a copy of the charges against him and an opportunity of being heard in his defense" [art. VI, s. 4, Wis. Const.].

Section 17.09 (5), Stats., states that the Governor may, for cause, remove a district attorney from office. The word "cause" as used in ch. 17, Stats., means, unless qualified, "inefficiency, neglect of duty, official misconduct or malfeasance in office" [s. 17.16 (2), Stats.].

The statutory procedure for removing an officer, including a district attorney, for cause is set forth in s. 17.16 (3), Stats., and includes the requirements of written verified charges, right to counsel, notice of hearing, speedy public hearing and various other due process protections.

2. Suspension

Under current law, the Governor may suspend a district attorney from office in the case of a misdemeanor and must suspend a district attorney from office in the case of a felony if:

a. The district attorney is arrested or charged with an offense against state law; or

b. The Governor is "credibly informed" that:

(1) The district attorney is guilty of an offense against state law;

(2) Proceedings are pending before any court or officer involving a criminal charge against the district attorney; or

(3) The district attorney is wilfully neglecting or refusing to perform his or her duties [s. 17.11 (1), Stats.].

The suspension must continue until the charge is "investigated and finally determined."

The Governor must appoint the Attorney General, one of the assistant attorneys general or "some competent attorney of the state" to discharge the district attorney's duties during the suspension. The appointed district attorney is required to "speedily bring to a hearing and determination" any charges made against the suspended district attorney [s. 17.11 (1) and (3), Stats.].

If it is determined in the investigation of or action or proceeding against the district attorney, that he or she is not guilty of the offense or has not wilfully neglected or refused to perform his or her duties, and that fact is certified to the county clerk by the Governor, the district attorney is entitled to "the emoluments of his office for the time he would have served therein had he not been suspended." In addition, the district attorney must be restored to office if the term for which he or she was elected or appointed has not expired [s. 17.11 (4), Stats.].

3. Recall

Under art. XIII, s. 12, Wis. Const., the qualified electors of any county may petition for the recall of any incumbent elective officer after the first year of the term for which the incumbent was elected. The recall petition must be signed by electors equaling at least 25% of the vote cast for the office of Governor at the last preceding election in the county which the incumbent represents. The person who receives the highest number of votes in the recall election must be elected for the remainder of the term. After one such petition and recall election, no further recall petition may be filed against the same officer during the term for which he or she was elected.

The procedures and time requirements for the recall primary election, if necessary, and the recall election are set forth in art. XIII, s. 12, Wis. Const. [as amended April 1981].

E. COMPENSATION AND EXPENSES

1. Compensation

a. Current Law

Under current law, the county board must establish the total annual compensation to be paid to elective county officers (other than county board supervisors and circuit judges) who are paid in whole or in part

from the county treasury. This includes the district attorney. The compensation must be established prior to the earliest time for filing nomination papers for the office and may be established by ordinance or resolution.

Section 59.15 (1) (a), Stats., provides that the compensation set by the board must not be increased nor diminished during the officer's term and must remain at the established level for ensuing terms unless changed by the board. However, s. 66.197, Stats., provides that the governing body of any county may, during the term of office of any elected official, increase the salary of the officials in such amount as the body determines.

In 69 OAG 1, 3 (1980), the Attorney General harmonized these provisions, concluding that:

(1) Section 59.15 (1) (a), Stats., "...functions to cause the compensation established prior to the earliest time for filing nomination papers to be the compensation in effect at the time the new term of office begins"; and

(2) Section 66.197, Stats., "...permits increases in compensation during the term of office, but the rate in effect prior to the earliest time for filing nomination papers is the compensation which attaches to the office at the next ensuing term." Thus, an increase in compensation during a district attorney's term of office does not carry forward to ensuing terms even if he or she is reelected. Unless the county board acts to increase the compensation of the newly-elected district attorney, his or her compensation will be the same as that established prior to the previous term.

b. Prior Law; State Supplement

Prior to the repeal of s. 59.471, Stats., by Ch. 39, Laws of 1975 (the 1975 Budget Act), the law relating to district attorney salaries provided as follows:

(1) Minimum salaries were to be paid to district attorneys by the counties, based on the size of the county and whether or not the county permitted its district attorney to practice law privately. In counties where the district attorney was permitted to practice law privately, the minimum salary required to be paid by the county ranged from $3,500 per year in a county having less than 20,000 population to $8,500 per year in a county having 100,000 or more population. In these counties, the salary was to be paid in addition to the state supplement described in (2), below. In counties where the district attorney was not permitted to practice law privately, the minimum salary was $16,500, but the county was

required to pay only that portion of the salary not paid by the state supplement. In all counties, the minimum salary was required to be paid semimonthly.

(2) A state supplement to the district attorney's salary was provided. A county was required to pay its district attorney a supplement of $4,500 per year in equal, semimonthly instalments. The state then reimbursed the county in this amount [ss. 20.855 (2) (b) and 59.471, 1973 Stats.].

Both the minimum salary and salary supplement provisions were created by Ch. 325, Laws of 1967. In 1975, the minimum salary and state supplement provisions were repealed along with another provision requiring state salary supplements for deputy and assistant district attorneys. A review of the meager legislative history relating to the repeal of these provisions indicates only that the repeal of the salary supplements was recommended by Governor Lucey as a budget-cutting measure. The Legislative Fiscal Bureau estimated that the repeal of the supplements would save the state $1.1 million in the biennium.

Subsequent to the repeal of the state salary supplements, several district attorneys "protested" the loss of the supplement by moving their local courts to amend uncontested state traffic charges to county ordinance violations. In at least three counties, the courts granted these motions and amended approximately 250 state charges to county ordinance violations [64 OAG 157, 159 (1975)]. The amendment was significant because the county and the state school fund each receive a portion of the forfeiture on a state charge, but the county retains 100% of the forfeiture from a county ordinance violation.

In response to an inquiry from the Wisconsin Department of Transportation concerning the legality of this "protest," the Attorney General concluded that district attorneys have a statutory duty to prosecute state actions and cannot properly refuse to prosecute these actions merely to secure diversion of the forfeiture proceeds from the state school fund to county treasuries [64 OAG 157 (1975)].

2. Reimbursement for Expenses

Under current law, the county board may provide for reimbursement to any elective officer, deputy officer, appointive officer or employe of any out-of-pocket expense incurred in the discharge of his or her duties. The reimbursement must be in addition to his or her salary or compensation and includes, among others:

a. Traveling expenses within or without the county or state;

b. Tuition costs incurred in attending courses of instruction "clearly related" to his or her employment; and

c. Standard allowances established by the board for mileage, rooms and meals. The board may establish the purposes for which such allowances may be made.

Current law provides that the county board may determine the reasonableness of and the necessity for these reimbursements [s. 59.15 (3), Stats.].

F. DUTIES OF DISTRICT ATTORNEY

1. General Duties

The Wisconsin district attorney has a wide variety of responsibilities and duties which may vary from county to county. The popular perception of the office of district attorney accurately reflects the district attorney's primary function: the prosecution of criminal cases. The general duties of district attorneys are listed in s. 59.47, Stats. More specific duties are imposed on district attorneys throughout the statutes, but these duties relate primarily to the general duty to prosecute criminal actions.

In some counties, the county corporation counsel handles civil matters that otherwise would be the responsibility of the district attorney. The Wisconsin Department of Justice also performs functions that relieve district attorneys of tasks they might otherwise be required to perform. The role of the county corporation counsel and the Department of Justice are described in Sections I and J, below.

The duties of the Wisconsin district attorney include:

a. Prosecute or defend all criminal actions in the court of the district attorney's county in which the state or county is interested or is a party [s. 59.47 (1)];

b. Prosecute or defend all civil actions in the court of the district attorney's county in which the state or county is interested or a party [s. 59.47 (1)];

c. Upon request of the circuit court for the district attorney's county, prosecute criminal actions, conduct criminal examinations before

the court and prosecute or defend civil actions in which the county is interested or a party [s. 59.47 (2)];

d. Represent the state in any appeal concerning a case which is decided by a single court of appeals judge [s. 59.47 (7)]. These cases are small claims cases, municipal ordinance violations, civil traffic regulation cases, cases arising under ch. 51, the Mental Health Act, and ch. 55, relating to protective services, cases arising under the Children's Code and misdemeanors;

e. Upon request of the Attorney General, handle criminal cases in the court of appeals or supreme court [s. 59.47 (7)];

f. At the request of the town chairperson, prosecute civil forfeiture actions for towns [s. 778.12]; and

g. Give legal advice to the county board and county officers concerning matters in which the county or state is interested and matters relating to the discharge of the official duties of the county board and county officers [s. 59.47 (3)].

2. Prosecution of Criminal Cases; Prosecutorial Discretion

As noted above, the district attorney's primary responsibility is to prosecute criminal cases. In carrying out this duty, the district attorney may encounter a wide variety of tasks and be faced with difficult decisions. Some of these tasks and decisions are described below.

While the district attorney's primary function in connection with criminal cases is the actual prosecution of cases, he or she may also become involved in the investigation of a criminal case. This involvement may be formal or informal. There are three formal criminal investigative proceedings: the grand jury, John Doe proceedings and the coroner's inquest. The grand jury and John Doe proceedings are formal procedures, controlled by statute, to determine whether a crime has been committed and by whom. The coroner's inquest is a procedure to investigate a death to determine if criminal conduct was involved in causing the death. The district attorney's involvement in these proceedings may include initiating the proceeding and actively participating in the proceeding.

The district attorney's office may be involved in more informal criminal investigations by assisting law enforcement agencies in their investigation or by directly conducting an investigation. The district attorney's duties with respect to criminal investigation have been outlined in the Wisconsin District Attorney and the Criminal Case, by

Betty Brown, Assistant Attorney General (Department of Justice, April 1977). These duties include the following:

a. The general duty to inform law enforcement officers of their legal powers, duties and responsibilities.

b. The duty to give legal advice and provide services to law enforcement agencies during their investigation of particular crimes. The types of advice and services include:

(1) Interviewing and taking statements from victims of, and witnesses to, crimes.

(2) Advising law enforcement officers on the law of search and seizure and seeking issuance of search warrants or assisting in procuring written consent to searches.

(3) Procuring orders authorizing electronic surveillance.

(4) Requesting technical assistance with regard to scientific investigation.

(5) Advising officers on their power to make temporary investigative stops.

(6) Advising officers on the power to arrest without a warrant, drafting and issuing criminal complaints and seeking issuance of arrest warrants.

(7) Interviewing and taking statements from arrested persons.

(8) Advising officers on proper pretrial identification procedures.

During or following an investigation, the district attorney has the responsibility to decide whether to commence criminal prosecution. This decision involves considerable discretion on the district attorney's part and is an element of what is commonly known as "prosecutorial discretion." In addition to deciding whether to initiate prosecution in a particular case, the district attorney has great latitude in determining with which of several related crimes the defendant will be charged [s. 939.65, Stats.].

The discretion of prosecutors to initiate criminal prosecutions has been discussed frequently by the Wisconsin Supreme Court. The nature of the district attorney's discretion has been recently summarized as follows:

> This court has repeatedly emphasized that the prosecutor has great discretion in determining whether to commence a prosecution. While it is the prosecutor's duty to prosecute criminal actions, sec. 59.47, Stats., the prosecutor is not required to prosecute all cases in which it appears that the law has been violated. We have characterized the prosecutor's charging discretion as "quasi-judicial" in the sense that it is his duty to administer justice rather than to obtain convictions [footnote omitted].
>
> We have said that in general the prosecuting attorney is answerable to the people of the state and not to the courts or the legislature as to the way in which he exercises power to prosecute complaints [citations omitted]. Nevertheless, the charging decision of a district attorney is not unlimited; it has its bounds. [State v. Karpinski, 92 Wis. 2d 599, 285 N.W. 2d 729, 734 to 735 (1979).]

The discretion of district attorneys, as noted in the above quote, is not without bounds. The discretion can be limited by the courts, by constitutional and statutory provisions and professional standards of conduct.

For example, recent changes in the law relating to driving while intoxicated require the district attorney to seek court approval before amending or dismissing the charge [Ch. 20, Laws of 1981]. A more general example is the statement by the Wisconsin Supreme Court that it is the district attorney's duty "to refrain from instituting criminal charges unconscionably or unnecessarily" [Thompson v. State, 61 Wis. 2d 325, 212 N.W. 2d 109, 112 (1973)]. The latter duty includes within its scope the substance of a rule for professional conduct adopted by the Wisconsin Supreme Court:

> A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when the lawyer knows or it is obvious that the charges are not supported by probable cause [SCR 20.37 (1) (1980)].

The district attorney's prosecutorial discretion regarding commencement of a criminal action relates to the particular case; the district attorney does not have discretion over what laws the district attorney will enforce.

> The district attorney has a duty to prosecute all types of violations of the criminal law. Although he is a quasi-judicial officer, his discretion is not in determining what laws he will enforce in his county. He is "subordinate to legislative direction as to the cases in which he shall proceed." State v. Coubal, 248 Wis. 247, 257, 21 N.W. 2d 381 (1946). As stated in State ex rel. Kurkierewicz v. Cannon, 42 Wis. 2d 368, 380, 166 N.W. 2d 255 (1969), "the legislature may, if it desires, spell out the limits of the district attorney's discretion and can define the situations that will compel him to act in the performance of his legislatively prescribed duties." Even if he personally believes that a statute is unconstitutional, he has a duty to enforce that statute, although he has no duty to refrain from submitting constitutional questions to the court. [The Wisconsin District Attorney and the Criminal Case, supra, at p. 41.]

Once a criminal prosecution is commenced, the district attorney continues, of course, to represent the state in subsequent proceedings. The duties are numerous and vary according to the particular case. The district attorney may be required to decide whether to enter into plea negotiations with the defendant, divert the case from the criminal justice system, bring the case to trial or dismiss the case. Here again, prosecutorial discretion is involved. Once a conviction is obtained, the district attorney has duties in connection with the disposition of the defendant. After judgment of conviction, the district attorney may have duties in relation to various post-conviction motions, such as motion for a new trial, for leave to withdraw a guilty or no contest plea or to modify sentence. Finally, the district attorney may, depending on the case, be involved in appeals made in connection with the case.

G. RESTRICTIONS ON ACTIVITIES OF DISTRICT ATTORNEY

1. Restrictions on Being City, Village or Town Attorney

Under current law, it is unlawful for a district attorney of any county having a population of 40,000 or more, to hold the office of or act

as city attorney of any city in the county of which he or she is district attorney. If a district attorney violates this prohibition, his or her office of district attorney is to be deemed vacant [s. 59.48, Stats.].

Under current law, a district attorney who is not compensated by the county on a full-time basis may serve as a town or village attorney or as a city attorney in a county having a population of less than 40,000. In cases where conflicts arise as a result of his or her employment by a governmental unit other than the county, the district attorney must withdraw from such other employment and represent only the interests of the county [s. 59.485, Stats.].

2. Restrictions on Holding Judicial Office

Under current law, no district attorney while in office is eligible for or may hold any judicial office. The only exception is that a district attorney of any county having a population of 40,000 or less may also be the family court commissioner for the county. In that case, however:

a. The person must be disqualified from acting as district attorney in any action or proceeding involving the same subject matter, in whole or in part, of any action or proceeding in which the person has previously acted as family court commissioner. In this situation, a special prosecutor must be appointed to handle the matter.

b. The person must be disqualified from acting as family court commissioner in any action or proceeding involving the same subject matter, in whole or in part, of any action or proceeding in which the person has previously acted as district attorney. In this situation, either a temporary assistant family court commissioner must be appointed, or another attorney must be appointed to perform the duties of family court commissioner in relation to the matter [ss. 59.49 (3), 767.13 (4) and 767.16, Stats.].

3. Restrictions on Private Practice of Law

a. Right to Practice in General

In a recent opinion, the Attorney General stated that in spite of recent statutory changes, "...the county board continues to have power to determine whether a district attorney shall be entitled to practice law in addition to his duties as district attorney" [67 OAG 31, 37 (1978)]. The Attorney General added that the determination as to part-time private practice:

> ...should be made under s. 59.15 (1), Stats., when the board, prior to the earliest time for the circulation of nomination papers, establishes the total annual compensation to be paid for the office. Prospective candidates are entitled to know precisely what compensation is attached to the office [67 OAG 37].

b. Representing Certain Defendants

Under current law, no person who acted as district attorney for a county at the time of the arrest, examination or indictment of any person charged with a crime in that county may thereafter appear for, or defend that person against the crime charged in the complaint, information or indictment [s. 59.49 (4), Stats.].

c. Employment by Common Carrier or Public Utility Corporation

Under current law, it is unlawful for any district attorney or assistant district attorney, among others, to be retained or employed by any common carrier operating within Wisconsin or any public utility corporation, except a municipality. If a district attorney or assistant district attorney violates this provision, his or her office is deemed vacant [s. 196.675, Stats.].

4. Other Restrictions

a. Fees or Rewards for Official Duties

Under current law, a district attorney may not receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business to which it is the district attorney's official duty to attend [s. 59.49 (1), Stats.].

b. Law Partners

Under current law, a practicing attorney in this state may not have his or her office in the same room with any district attorney unless he or she is a law partner of the district attorney.

If an attorney is a law partner of the district attorney, he or she must not act as attorney in any case in which it is the duty of the district attorney to appear or prosecute for the state. However, a law partner of a district attorney may, at the request of the district attorney and without fee or compensation, assist the district attorney in the prosecution of any case on the part of the state [s. 757.22 (3),

Stats.]. The Attorney General has concluded that the provision prohibiting compensation does not prohibit a district attorney from compensating his or her law partner out of his or her own funds, for the partner's assistance in prosecuting a state case [67 OAG 31, 34 to 35 (1978)].

Current law also provides that a law partner of any district attorney may not do the following in any case or action in which it is the duty of his or her partner/district attorney to prosecute or appear for the state:

(1) Act as a municipal judge or court commissioner in any case in which the state may be a party;

(2) Defend in any court any person charged with any offense; or

(3) Appear in any civil action against the state [s. 757.22 (4), Stats.].

Any attorney who violates these prohibitions and any municipal judge or court commissioner who violates the prohibitions or knowingly permits a violation, is subject to a fine not to exceed $100 for each offense [s. 757.22 (5), Stats.].

H. ASSISTANT AND DEPUTY DISTRICT ATTORNEYS; OTHER SUPPORT STAFF

1. Assistants and Staff in Other Than Special Counties

Under current law, except in counties having a population of 200,000 or more, the district attorney may, when authorized by the county board by a majority of all of its members, appoint the following to aid him or her:

a. One or more assistant district attorneys;

b. A stenographer; and

c. A clerk.

Section 59.45, Stats., requires the assistant district attorneys to be admitted to practice law in the State of Wisconsin. The assistant district attorneys are permitted to perform all the duties of the district attorney, but are not required to give an official bond [s. 59.45, Stats.].

2. Deputies, Assistants and Staff in Special Counties

a. Counties of 200,000 or More Population

Under current law, the district attorney of any county having a population of 200,000 or more may appoint three deputy district attorneys and as many assistant district attorneys as are authorized by the county board.

The deputies must each have practiced law in the state at least two years prior to appointment and hold office at the pleasure of the district attorney. The deputies "according to rank" have authority to perform all the duties of the district attorney, but under the district attorney's direction. In the absence or disability of the district attorney, the deputies, according to rank, may do and perform all the acts required by law to be performed by the district attorney.

Assistant district attorneys in these counties are also given full authority to perform all the duties of the district attorney, under the district attorney's direction [s. 59.46 (1), Stats.].

b. Additional Staff for Counties with 500,000 or More Population or with 2nd or 3rd Class City

In addition to the deputies and assistants described in "a," above, the district attorney of any county having a population of 500,000 or more or containing a city of the 2nd or 3rd class may appoint:

(1) One or more clerks and one or more stenographers. The number and salary of these additional staff persons is to be fixed by the county board [s. 59.46 (2), Stats.].

(2) The number of investigators which have been authorized by the county board. These investigators have general police powers within the county. The county board may abolish these positions at its pleasure [s. 59.46 (3), Stats.].

Cities of the 2nd class are those with a population of not less than 39,000 and less than 150,000. Cities of the 3rd class are those with a population of not less than 10,000 and less than 39,000 [s. 62.05 (1) (b) and (c), Stats.].

3. Compensation and Expenses of Assistants, Deputies and Staff

a. Current Law

Under current law, the county board may "provide, fix or change" the salary or compensation of any county employe whose salary or compensation is paid in whole or in part by the county. This includes deputy and assistant district attorneys and support staff [s. 59.15 (2), Stats.].

As discussed above, the county board may also provide for reimbursement of certain out-of-pocket expenses incurred by county officers and employes [s. 59.15 (3), Stats.].

b. Prior Law; State Supplement

As described earlier, prior to the repeal of s. 59.471, Stats., by Ch. 39, Laws of 1975, the law provided for a state supplement of $3,000 per year to the salaries of full-time deputy and assistant district attorneys. The county was required to pay the supplement in equal semimonthly instalments. The state then reimbursed the county the amount of the supplement [ss. 59.471 and 20.855, 1973 Stats.].

4. Attorneys Appointed to Assist District Attorney Under Special Circumstances

a. Prosecutions, Grand Jury and John Doe Proceedings

Under current law, upon application of the district attorney, any judge of a court of record may appoint counsel to assist the district attorney in (1) prosecution of persons charged with a crime, (2) grand jury and John Doe proceedings and (3) any other investigations [s. 59.44 (2), Stats.].

The Wisconsin Supreme Court has held that s. 59.44 (2), Stats., is not the exclusive means by which a court can appoint a special prosecutor in criminal cases. A trial court may, on its own, appoint counsel when the district attorney refuses to continue a criminal action against the defendant [State v. Lloyd, 104 Wis. 2d 49, 56, 310 N.W. 2d 617 (1981)].

b. Civil Litigation

Under current law, when there is an unusual amount of civil litigation to which the county is a party or in which it is interested, the circuit court may, on application of the county board, appoint an attorney or attorneys to assist the district attorney [s. 59.44 (3), Stats.]. It should be noted that in a county with a corporation counsel,

the corporation counsel may be responsible for handling some or all of these civil matters.

c. Compensation of Appointed Attorneys

Current law provides that the court must fix the amount of compensation for these specially appointed attorneys. The compensation must be in an amount as is customarily charged by attorneys of this state for comparable services. The appointed attorney must also be repaid for his or her disbursements "in such sum as the court deems proper" [s. 59.44 (4), Stats.].

I. ROLE OF COUNTY CORPORATION COUNSEL

1. Counties other than Milwaukee County

Counties other than Milwaukee County are authorized, not required, to employ a corporation counsel and may authorize the corporation counsel to appoint one or more assistants. By law, the duties of the corporation counsel are limited to civil matters [s. 59.07 (44), Stats.]. The statutes appear to give the county board the authority to determine the particular civil matters for which the corporation counsel is responsible.

The office of corporation counsel is important in relation to the office of district attorney because the former may relieve the latter of many responsibilities and duties:

> Whenever any of the powers and duties conferred upon the corporation counsel are concurrent with similar powers or duties conferred by law upon the district attorney, the district attorney's powers or duties shall cease to the extent that they are so conferred upon the corporation counsel and the district attorney shall be relieved of the responsibility for performing such powers or duties. Opinions of the corporation counsel on all such matters shall have the same affect as opinions of the district attorney [s. 59.07 (44), Stats.].

The county corporation counsel may obtain, upon request, consultation and advice from the Department of Justice [s. 59.07 (44), Stats.].

2. Milwaukee County

While the office of corporation counsel is optional in other counties, Milwaukee County is required to have a corporation counsel [s. 59.455, Stats.]. The county board is authorized to provide for assistant corporation counsels and support staff. All offices and positions in the office of county corporation counsel for Milwaukee County are required to be included in the County's classified civil service.

Unlike other counties, where the county board determines the civil matters to be handled by the corporation counsel, the duties of the corporation counsel for Milwaukee County are set forth in the statutes, as follows:

a. Prosecute and defend all civil matters in which the county or a county officer is interested or a party, including duties within this category otherwise under the jurisdiction of the district attorney [s. 59.456 (1) and (5), Stats.];

b. Represent or assist in representing the state in any civil matter when requested to do so by the Attorney General or when the district attorney is otherwise required by statute to do so [s. 59.456 (1), Stats.];

c. Give advice to the county board and all the county's boards, commissions, committees, agencies or officers concerning civil matters [s. 59.456 (2), Stats.];

d. Examine all claims against the county for various fees in civil actions when presented to the county board and advise the county board regarding claims filed against the county; and

e. Act as a legislative counsel for the county board when the board so authorizes.

Certain duties in Milwaukee County that, under the above general duties, might otherwise fall on the corporation counsel under statute are to be handled by the district attorney [s. 59.456 (6), Stats.]. These include: handling all civil matters under the Uniform Reciprocal Enforcement of Support Act; seeking declaratory judgments against obscene matter; and handling competency to proceed proceedings, habeas corpus proceedings and inquests of the dead.

The Milwaukee County district attorney and corporation counsel may share duties in juvenile matters, depending on the direction of the court. Finally, when requested by the county board, the district attorney is required to prosecute all violations of Milwaukee County ordinances.

Like corporation counsels for other counties, the Milwaukee County corporation counsel may obtain, upon request, consultation and advice from the Department of Justice [s. 59.456 (5), Stats.].

J. ROLE OF THE DEPARTMENT OF JUSTICE

Among the general duties of the Wisconsin Department of Justice (DOJ) is the duty to "consult and advise with district attorneys, when requested, in all matters pertaining to the duties of their office" [s. 165.25 (3), Stats.]. The services offered by the DOJ to Wisconsin district attorneys go well beyond general consultation and advice. The various divisions of the DOJ offer a wide variety of services to district attorneys. These services are summarized below.

In addition to providing a variety of services to district attorneys, the DOJ is charged with the enforcement of certain laws that otherwise would be the responsibility of district attorneys, primarily laws that have a "statewide" aspect. For example, the DOJ has general responsibility for enforcement of antitrust laws. In the case of some laws, the DOJ and district attorneys have shared authority for the law's enforcement, such as certain consumer protection laws.

1. Division of Criminal Investigation

Generally, the Division of Criminal Investigation is responsible for all of the criminal investigations the Department is authorized to conduct. The Division's functions include:

a. The investigation of crime that is statewide in nature, importance or influence, including organized crime and white collar crime [s. 165.50 (1), Stats.];

b. The investigation of arson cases [s. 165.50 (2), Stats.];

c. The enforcement of laws relating to controlled substances, gambling, battery to witnesses and jurors, machine guns, extortionate extensions of credit, prostitution and obstruction of justice [s. 165.70 (1)]; and

d. Providing assistance to local law enforcement in major cases, upon request.

To carry out its duties, the Criminal Investigation Division is organized into four bureaus: the Arson Bureau, the General Investigations Bureau, the Narcotics and Vice Bureau and the White Collar Crimes Bureau.

2. Division of Law Enforcement Services

a. Crime Laboratory Bureau

The Crime Laboratory Bureau provides technical and scientific assistance to state and local law enforcement officers in connection with analysis of physical evidence. The Bureau has a field team on call 24 hours a day, seven days a week, to respond to requests for assistance at major crime scenes and autopsy examinations.

By statute, the minimum services to be offered by the Crime Lab are:

> ...the recognition and proper preservation, marking and scientific analysis of evidence material in the investigation and prosecution of crime in such fields as firearms identification, the comparison and identification of toolmarks, chemistry, identification of questioned documents, metallurgy, microscopy, instrumental detection of deception, the identification of fingerprints, toxicology, serology and forensic photography [s. 165.75 (3), Stats.].

In the past, the Bureau offered polygraph services, but has discontinued such services because of budget constraints.

b. Crime Information Bureau

The Crime Information Bureau:

(1) Maintains a central identification service, including fingerprints, descriptions, photographs and other identifying data, on persons who have been arrested or taken into custody in the state. In connection with this function, the Bureau publishes an "Identification Newsletter," which provides general information on criminal identification and serves to coordinate the use of the identification service.

(2) Maintains a statewide communications system with links to national crime files, communication systems in other states, Wisconsin Department of Transportation motor vehicle and driver files, local law enforcement agencies and state crime files. The communications system is intended to aid the location of wanted persons and property.

(3) Publishes the "Wisconsin Law Enforcement Bulletin" on a monthly basis. The Bulletin is intended for use by law enforcement agencies generally and contains general crime information and information on

proposed laws, newly-enacted laws and court decisions of interest to law enforcement agencies.

Until recently, the Crime Information Bureau collected and maintained statistics relating to the Wisconsin criminal justice system but, according to the Bureau, this service is no longer offered due to budget constraints.

3. Division of Legal Services

The Division of Legal Services provides several services that directly assist district attorneys. The Division:

(1) Provides written legal opinions upon request;

(2) Provides general consultation and advice concerning legal matters with which district attorneys are involved;

(3) Operates the Statewide Prosecutor Education and Training Program ("SPET"), which conducts several seminars annually for district attorneys, including programs for new district attorneys and programs providing information on recent changes in the law;

(4) Operates a "hotline," through which district attorneys may obtain access to a legal brief bank, jury instructions and general assistance, including advice concerning legal questions that arise during trial; and

(5) Publishes the "Prosecutor's Bulletin," which highlights recent legislation, court decisions and Attorney General opinions and contains a variety of general information of interest to district attorneys. In addition, the Division publishes a digest providing in-depth analyses of court decisions affecting criminal law.

The Division of Legal Services also handles matters in which the state is interested or a party in the Wisconsin Court of Appeals and Supreme Court. Some of these are matters in which a district attorney has been involved up to the point of appeal. The Division may request a district attorney to continue to handle a case on appeal and, according to the Division, has been doing so more frequently due to budget constraints on the DOJ. [By statute, appeals decided by a single court of appeals judge are handled by the district attorney.]

PART II

COMPARISON OF STATE PROSECUTORIAL SYSTEMS

A. INTRODUCTION

This portion of the Research Bulletin compares prosecutorial systems in the 50 states. In order to make the comparison as useful and brief as practicable, each state system is categorized by the organizational structural models described by Daniel L. Skoler in Ch. 5, "Prosecution Services," Organizing the Non-System (1977, D.C. Heath and Co.). Individual states which represent each of the three models are described in detail in the Appendices.

Although other categorizations could be devised to describe state prosecutorial systems, Mr. Skoler's organizational structure models were used because they identify what some critics perceive as important problem areas in present state systems.

According to Mr. Skoler, three basic structural models of prosecutorial systems exist in the United States:

1. Central administration. Systems where there is central state administration of all prosecution;

2. Regulatory. Systems where significant regulatory or oversight powers reside in state government (typically the Attorney General) with retention of local prosecution units and an important technical assistance commitment from the state; and

3. Decentralized collegial. Systems where there is coordination through statewide organizations of prosecutors themselves on a consensual basis, again with a significant technical assistance component.

These three basic models illustrate alternative approaches to solving or at least coping with two major problems facing prosecutorial systems. These problems are described by Mr. Skoler as: (1) a lack of "coordination among prosecutorial offices resulting from their basic autonomy and absence of centralized control, inspection, or policy formulation" and (2) "the existence of offices based on small territorial and population areas, giving rise to part-time functionaries unable to meet contemporary standards of quality and professionalism in service delivery" [Id., p. 143].

Table 1 (shown on pages 29 and 30 of this Research Bulletin) arranges the 50 states based on the prosecutorial system models described above and presents for each state information on various aspects of these systems.

In classifying the states as to structural model it was necessary to ignore important distinctions between states with a decentralized collegial system. As observed by Mr. Skoler, significant prosecution responsibilities have been given to their attorneys general in many collegial states, including:

> --thirteen states grant the attorney general unrestricted power to initiate local prosecutions and the great majority [including Wisconsin] authorize the initiation of prosecutions with respect to some classes of crime;
>
> --twenty-one states allow the attorney general to give assistance in local prosecutions even without a local request;
>
> --nine states require local prosecutors to make reports on request of the attorney general; six other states mandate periodic reports;
>
> --twenty states authorize the attorney general to intervene on his own initiative in local prosecutions; fourteen states allow supersession of local prosecutors in the same manner; and
>
> --at least thirty states vest exclusive authority for handling appeals in the attorney general and in almost all others [including Wisconsin], he shares or has some appellate authority.

As can be seen from Table 1, most prosecutors are locally elected and not responsible to a central state authority. In two states, Connecticut and New Jersey, local prosecutors are appointed by the state. Only three states (Alaska, Delaware and Rhode Island) have completely centralized the administration of their prosecutorial systems. Thirteen states have adopted the regulatory model--commonly giving the Attorney General supervisory authority over all prosecutors. In the remaining states, the prosecutorial system is organized according to the decentralized collegial model.

TABLE 1

NATURE OF THE PROSECUTOR

State	Title	Jurisdiction	Area	Selection	Term	Removal
		TYPE 1: CENTRAL ADMINISTRATION (3 states)				
Alaska	District Attorney	Criminal-Civil	Judicial District	Appointed	Indefinite	Governor
Delaware	No local prosecutor					
Rhode Island	No local prosecutor					
		TYPE 2: REGULATORY (14 states)				
Arizona	County Attorney	Criminal-Civil	County	Elected	4 years	
California	District Attorney	Criminal-Civil	County	Elected	4 years	Impeachment
Connecticut	Prosecuting Attorney	Criminal	County	Appointed	4 years	Court of Common Pleas
	State's Attorney	Criminal	County	Appointed	4 years	Superior Court
Florida	State's Attorney	Criminal-Civil	Judicial Circuit	Elected	4 years	
Idaho	Prosecuting Attorney	Criminal-Civil	County	Elected	2 years	
Iowa	County Attorney	Criminal-Civil	County	Elected	4 years	Recall, Impeachment
Massachusetts	District Attorney	Criminal-State Civil-Appeals	Judicial District	Elected	4 years	Impeachment, AG
Michigan	Prosecuting Attorney	Criminal-Civil-Appeals	County	Elected	4 years	Governor
Nevada	District Attorney	Criminal-Civil	County	Elected	4 years	Suit by Accusation, Complaint
New Hampshire	County Attorney	Criminal-Civil	County	Elected	2 years	Superior Court
New Jersey	County Prosecutor	Criminal	County	Governor with consent of Senate	5 years	
Pennsylvania	District Attorney	Civil-Criminal-Appeals	County	Elected	4 years	Impeachment
South Carolina	Solicitor	Criminal-State Civil	Judicial District	Elected	4 years	
Texas	County Attorney	Criminal-Civil	County	Elected	4 years	District Court
	District Attorney	Criminal	District	Elected	4 years	District Court
	Criminal D.A.	Criminal	County	Elected	2 years	
		TYPE 3: DECENTRALIZED COLLEGIAL (33 states)				
Alabama	District Attorney	Criminal-Civil	Judicial District	Elected	4 years	Impeachment
Arkansas	District Prosecuting Attorney	Criminal	Judicial District	Elected	2 years	Impeachment
Colorado	District Attorney	Criminal	Judicial District	Elected	4 years	Impeachment
Georgia	District Attorney	Criminal-Civil Appeals	Judicial District	Elected	4 years	Impeachment
Hawaii	City or County Attorney	Criminal-Appeals	County	Elected	2 years	Impeachment
Illinois	State's Attorney	Criminal-Civil Appeals	County	Elected	4 years	
Indiana	Prosecuting Attorney	Criminal	Judicial District	Elected	4 years	Impeachment Supreme Court

State	Title	Jurisdiction	Area	Selection	Term	Removal
Kansas	County Attorney	Criminal-Civil-Appeals	County	Elected	2 years	
Kentucky	County Attorney Commonwealth Attorney	Misdemeanors Felonies-State Civil	County District	Elected Elected	4 years 6 years	Impeachment
Louisiana	District Attorney	Criminal-State Civil	Judicial District	Elected	6 years	
Maine	District Attorney	Criminal-Civil	Prosecutorial District (8)	Elected	2 years	Supreme Judicial Court
Maryland	State's Attorney	Criminal-Civil	County or City	Elected	4 years	Impeachment, AG
Minnesota	County Attorney	Criminal-Civil-Appeals	County	Elected	4 years	Governor
Mississippi	District Attorney County Prosecuting Attorney	Felonies Misdemeanors	Judicial District County	Elected Elected	4 years 4 years	
Missouri	Prosecuting Attorney County Attorney	Criminal Misdemeanor	County County	Elected Elected	2 years 2 years	Suit Suit
Montana	County Attorney	Criminal-Civil	County	Elected	4 years	
Nebraska	County Attorney	Criminal-Civil	County	Elected	4 years	Governor
New Mexico	District Attorney	Criminal	Judicial District	Elected	4 years	
New York	District Attorney	Criminal-Appeals	County	Elected	3 years	Governor
North Carolina	District Attorney	Criminal	District	Elected	4 years	
North Dakota	State's Attorney	Criminal-Appeals	County	Elected	2 years	Governor
Ohio	Prosecuting Attorney	Criminal-Civil-Appeals	County	Elected	4 years	
Oklahoma	District Attorney	Criminal-Civil	District	Elected	4 years	Impeachment, Suit
Oregon	District Attorney	Criminal-Civil-Appeals	County	Elected	4 years	Recall, Suit
South Dakota	State's Attorney	Criminal-Civil	County	Elected	2 years	Governor
Tennessee	District Attorney General	Criminal	Judicial District	Elected	8 years	Impeachment
Utah	County Attorney	Criminal-Civil-Felonies	County	Elected	4 years	Court Trial, Referendum, Impeachment
Vermont	State's Attorney	Criminal-Civil-Appeals	County	Elected	2 years	Impeachment
Virginia	Commonwealth Attorney	Criminal-Civil	County or City	Elected	4 years	Circuit Court
Washington	Prosecuting Attorney	Criminal-Civil-Appeals	County	Elected	4 years	Legislative Resolution
West Virginia	Prosecuting Attorney	Criminal-Civil	County	Elected	4 years	Impeachment
Wisconsin	District Attorney	Criminal-Civil	County	Elected	2 years	Governor
Wyoming	County and Prosecuting Attorney	Criminal-Civil	County	Elected	4 years	Governor

SOURCE: Based on data from National Prosecution Standards, National District Attorneys Association (1977).

B. CENTRAL ADMINISTRATION STATES

Unique state characteristics (geography, population size and disbursement and other factors) may account, in part, for the centralization in three states of what has historically been a decentralized system. The central administration model has the potential for working well in the opinion of Mr. Skoler. He suggests that "[c]entral prosecution systems can operate well and probably optimally (except in perhaps two or three of the largest states) with simple two-layer administrative structures, i.e., the state headquarters and a series of local prosecution offices" [Id., p. 157].

Mr. Skoler also suggests that there are several reasons why a simple central system is feasible. Two primary reasons are the fact that prosecutorial staffs are composed of professionals who are subject to standards of conduct and guided by "criminal codes, court procedures, judicial decisions, procedural rules and the technology of litigative activity" [Id.]. While central system models have potential for success, Mr. Skoler observes that care must be exercised in establishing the system so that central policy directives address only major policy issues and do not interfere with the day-to-day discretionary authority that is needed by the local prosecutor.

One central administration state that has implemented a major policy change is Alaska. On July 3, 1975, the Alaska Attorney General declared an official, statewide prohibition against "...plea negotiations with defendants that are designed to arrive at an agreement for entry of a plea of guilty in return for a particular sentence to be either recommended by the state or not opposed by the state...." While national organizations and other states continue to monitor the effect of this "plea bargaining ban," the findings of the Alaska Judicial Council's evaluation of this policy, which was funded by the National Institute for Law Enforcement, are worthy of note:

> --Court processes did not bog down; they accelerated.
>
> --Defendants continued to plead guilty at about the same rates.
>
> --Although the trial rate [proportion of cases receiving trial] increased substantially, the number of trials remained small [manageable].
>
> --Sentences became more severe--but only for relatively less serious offenses and relatively "clean" offenders.

--The conviction and sentencing of persons charged with serious crimes of violence such as murder, rape, robbery, and felonious assault appeared completely unaffected by the change in policy.

--Conviction rates did not change significantly overall, although prosecutors were winning a larger proportion of those cases that actually went to trial [Rubenstein, Clarke and White, Alaska Bans Plea Bargaining, p. vii, United States Dept. of Justice, National Institute of Justice (July 1980)].

The Alaska experiment in banning plea negotiations is mentioned primarily to illustrate the potential for major prosecutorial policy changes and innovations that are possible under a central administration system. It is less likely that such a major policy change could be implemented as completely or effectively in states with regulatory or collegial systems. However, states which have adopted the regulatory model would appear to be in a better position than the decentralized collegial states in attempting such a significant policy change. Appendix A contains a description of the central administration system in Alaska.

C. REGULATORY SYSTEM STATES

The regulatory model is the most commonly recommended structural reform proposal. Under this model, the autonomous local prosecutor is retained but a state regulatory system is recommended "...to assure even-handed justice and diligent enforcement from the prosecution function throughout the state" [Skoler, p. 159]. The obvious advantages of this model are that "...it permits true decentralization and local decision-making. The problems relate to the ability to provide adequate financing, fair resource allocation, policy coherence, disciplinary action when required in the public interest, and technical assistance for needy offices" [Id.].

Most states which have adopted this prosecutorial system model place the central regulatory authority in the office of the State Attorney General. However, some observers believe that because of the limited criminal role of this agency, local prosecutors may prefer a different locus of power. Several reform proposals, discussed in Part III, designate a "state director of prosecution" or a special state office, independent of the Attorney General, as the central regulatory authority.

Mr. Skoler suggests that a workable regulatory model "...should focus on normal regulatory controls formulated on the consensual basis that

befits a highly professional function like prosecution, and deemphasizes extreme ad hoc remedies that do little to strengthen performance beyond the actual cases where used" [Id., p. 160]. He suggests that the "regulatory array" that seems best adapted to the success of this model would include the following elements:

--state policy- and standard-setting in limited areas requiring guidelines, with local prosecutor participation in formulation but reasonable enforcement authority once promulgated;

--emphasis on review, inspection, and monitoring techniques [by the state] which promise not so much displacement of local prosecutor decisionmaking nor correction of it but primarily guidance and strengthening of local resources to meet desired standards;

--[state] reporting and standardized data collection requirements which permit assessment of local performance and achievement of applicable standards;

--state resources to provide the technical assistance needed to fully meet policy and rulemaking mandates;

--some state disciplinary powers in carefully defined cases such as intervention and power to initiate removal proceedings for cause [Id., p. 160].

Appendix B contains descriptions of two state prosecutorial systems (Florida and Connecticut) which conform to the regulatory model. These states have adopted unique features in their systems. Florida organizes its prosecutorial system according to judicial circuits, with each circuit consisting of two or five counties. In Connecticut, the chief state's attorney, who has supervisory authority over state's attorneys (one in each of the 12 judicial districts), is appointed by the Chief Justice of the State Supreme Court for a four-year term; and the state's attorneys are appointed by the judges of the Superior Court (composed of several divisions handling both trial and appellate cases) to serve terms of four years.

In most states, except central administration states, prosecuting attorneys are elected. New Jersey, which like Connecticut, has a regulatory system, uses an appointment process to select both its Attorney

General and its county prosecutors. Appointment is by the Governor with the advice and consent of the State Senate. Appointment of the Attorney General is for the length of term of the Governor (four years); county prosecutors, who are under the supervision of the Attorney General, are appointed for five-year terms.

D. DECENTRALIZED COLLEGIAL SYSTEM STATES

The most common system is the decentralized collegial system which, like the regulatory model, preserves the independence of the prosecutor. It differs from the regulatory model by establishing state prosecutorial policy through the enactment of statutes instead of by the creation of a supervisory state agency--the emphasis is on state assistance but not state supervision. Mr. Skoler suggests that effective implementation of this model requires:

1. State financial help;

2. Legislation defining the limits of discretionary action, which could be broadly or narrowly articulated, and comparable limits established by court rules of practice;

3. Coordination achieved through the action of a statewide prosecutor's organization, functioning as a cooperative, consensual body; and

4. A state support office to assist local prosecutors in the variety of areas where their own resources and capabilities may not be adequate [Id., p. 161].

States which have the decentralized, collegial prosecutorial system attempt to achieve coordination of prosecution services through the use of statewide organizations of prosecutors or advisory councils and similar governmental agencies. In Minnesota, for example, a County Attorneys Council is created by statute [s. 388.19, Minn. Stats. Ann. (1981)]. The Council is composed of the county attorney from each of the 87 Minnesota counties, and is staffed by a Director and other employes who are in the unclassified service of the State.

The duties of the Minnesota County Attorneys Council are to strengthen the criminal justice system and increase the efficiency of county government through training and continuing legal education, dissemination of useful information and the use of interdisciplinary seminars to improve coordination of law enforcement, courts and corrections services. Like Minnesota, the States of Iowa, Indiana and Michigan authorize, by statute, prosecutor coordinating councils or

similar governmental agencies. However, while Indiana and Minnesota have collegial systems, Michigan and Iowa have regulatory systems where the Attorney General has supervisory authority over county prosecuting attorneys.

Appendix C contains descriptions of two states with decentralized collegial systems. Oklahoma is representative of a system organized by judicial districts (it switched from a part-time county prosecutor to a full-time prosecutor district system in 1965). Oregon represents a county prosecutor system. One feature of interest of the Oregon system is that both the state and the county assist in financing the district attorney's office.

PART III

NATIONAL STUDIES OF PROSECUTORIAL SYSTEMS

Proposals to reform prosecutorial systems in this country have been influenced by the repeated claims that an effective organizational structure could improve the coordination and delivery of prosecution services. In general, the fragmentation and autonomy of most prosecution systems, coupled with the broad discretionary power of the local prosecutor, has been criticized as preventing the coordination necessary to improve the prosecution aspect of the criminal justice system. The study commissions and groups, briefly discussed below, have proposed various approaches to improving the delivery of prosecution services.

A. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT (1931)

In 1931, the National Commission on Law Observance and Enforcement, which is better known as the Wickersham Commission, expressed the view that the decentralized prosecutorial system was suitable to the rural society of the 1800's but inadequate to meet the needs of a unified, urban industrial society. The Commission recommended "[s]implification of the structural organization of the prosecution and of the courts, looking toward the unification of prosecution at least in each county and possibly ultimately in the State..." [Wickersham Commission Reports, "No. 4 Report on Prosecution," p. 181, National Commission on Law Observance and Enforcement (orig. pub. 1931; reprinted by Patterson Smith, 1968)].

The Commission also recommended better provision for selection, compensation and tenure of local prosecutors and their staffs. The centralized system and other recommendations of the Commission were not detailed, in recognition of the great variation of conditions in the states.

B. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1952)

In 1952, the Model State Department of Justice Act, which was promulgated by the National Conference of Commissioners on Uniform State Laws and the American Bar Association (ABA) Commission on Organized Crime, proposed the creation of a strong regulatory system patterned after the Federal Department of Justice. Specifically, key provisions of the Model Act provided that the State Attorney General or other departmental director be given supervisory and regulatory powers over local prosecutors. In addition to general supervisory authority, the Model Act gave the Attorney General power to intervene in, or supersede and relieve

the local prosecutor in, legal actions on either the Attorney General's initiative or when requested by the Governor, a grand jury or other appropriate agencies. The Model Act also authorized the Attorney General to initiate any criminal action or proceeding deemed necessary to promote and safeguard the public interests of the state and to enforce laws of the state. [Task Force Report: The Courts, pp. 78-79, President's Commission on Law Enforcement and Administration of Justice (1967).]

C. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE (1967)

In 1967, this Presidential Commission, headed by Nicholas deB. Katzenbach, advocated a strong regulatory system and recommended that: "States should strengthen the coordination of local prosecutors by enhancing the authority of the State attorney general or some other appropriate statewide officer and by establishing a State council of prosecutors under the leadership of the attorney general" [President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C.: U.S. Govt. Printing Office, 1967), p. 148].

The Commission also expressed support for the full-time prosecutor concept, suggesting that use of larger prosecutorial districts might be needed in smaller jurisdictions which could not justify full-time staff on a county or city basis. In conjunction with this recommendation, the Commission suggested that the quality of the office of prosecutor should be raised to attract highly talented lawyers and suggested that higher salaries and programs for the pre-service and in-service training of prosecutors were necessary to achieve that goal [Id.].

D. AMERICAN BAR ASSOCIATION (1970)

The Standards Relating to the Prosecution Functions, which were developed by the American Bar Association (ABA) in 1970, were similar to the recommendations of the 1967 President's Commission on Law Enforcement and Administration of Justice, which recommended a strong regulatory prosecutorial system. Criteria are set forth in ABA Standard 2.2 "...to improve the administration of justice and assure uniformity" relating to the [i]nter-relationship of prosecution offices within the state":

> 2.2 Inter-relationship of prosecution offices within the state.
>
> (a) Local authority and responsibility for prosecution is properly vested in a district,

> county or city attorney. Wherever possible, a unit of prosecution should be designed on the basis of population, caseload and other relevant factors sufficient to warrant at least one full-time prosecutor and the supporting staff necessary to effective prosecution.
>
> (b) In some states conditions such as geographical area and population may make it appropriate to create a statewide system of prosecution in which the state attorney general is the chief prosecutor and the local prosecutors are his deputies.
>
> (c) In all states there should be coordination of the prosecution policies of local prosecution offices to improve the administration of justice and assure the maximum practicable uniformity in the enforcement of the criminal law throughout the state. A state council of prosecutors should be established in each state.
>
> (d) In cases where questions of law of statewide interest or concern arise which may create important precedents, the prosecutor should consult and advise with the attorney general of the state.
>
> (e) A central pool of supporting resources and manpower, including laboratories, investigators, accountants, special counsel and other experts, to the extent needed, should be maintained by the state government and should be available to all local prosecutors.

E. NATIONAL ASSOCIATION OF ATTORNEYS GENERAL (1971)

In 1971, the Committee on the Office of Attorney General (COAG) of the National Association of Attorneys General adopted a number of formal recommendations on the prosecution function and the role of the district attorney. These recommendations included organizing local prosecutorial services according to districts which are sufficiently large to require full-time prosecutors and authorizing the Attorney General to train and assist local prosecutors through periodic conferences, information bulletins and a "lending library" of specialists (investigation, prosecution, administration, accounting and special equipment). The COAG also recommended that the Attorney General be given strong regulatory powers, including the authority to seek the removal of a district attorney

for misfeasance or malfeasance and the power to initiate, intervene or supersede local prosecutions. In addition, the COAG recommended that the Attorney General should represent the state in all criminal appeals and should have authority and resources to deal directly with certain crimes (organized criminal activity, consumer protection, securities, fraud and environmental protection) [The Prosecution Function: Local Prosecutors and the Attorney General, National Association of Attorneys General--Committee on the Office of Attorney General (1974)].

F. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS (1971)

The Advisory Commission on Intergovernmental Relations is a bipartisan federal body created by law to monitor the operations of the federal system and make recommendations for improvements at all levels of government. In 1971, the Commission's recommendations for improving prosecution services were incorporated into a draft entitled "State Omnibus Prosecution Act." Essentially, the Commission's recommendations support the regulatory organizational model. The Act incorporates the following key recommendations of the Commission:

1. All states should require that prosecuting attorneys be full-time officials. Where prosecutorial districts are too small to support a full-time prosecutor, the Commission suggests that district boundaries be redrawn to provide enough work and enough financial resources for a full-time official. In this regard, the Commission cites the success experienced by Oklahoma in replacing its county prosecutorial districts with a system corresponding to state judicial districts.

2. The local prosecution function should be centralized in a single official responsible for all criminal prosecutions.

3. The states should pay at least half the cost of investigations by the local prosecuting attorney. The Commission explains that "[t]his [recommendation] would help equalize the quality of performance throughout the state, raise the level of funding and thus of personnel, and provide a lever for greater state coordination."

4. The state should strengthen the authority of the Attorney General to oversee the work of local prosecutors. The Commission expressed the view that this was its most important recommendation and suggested the following ways in which this objective could be achieved: "through a State council of prosecutors under his [the Attorney General's] leadership; through the power to consult and advise local prosecutors, to attend local trials and assist in the prosecution and, where necessary, to intervene." The Commission further suggested that "...at the initiation of the attorney general, State supreme courts should have the power to remove prosecuting attorneys for cause" [Prosecution Reform, Advisory Commission on Intergovernmental Relations (September 1971), pp. 3-4].

G. COMMITTEE FOR ECONOMIC DEVELOPMENT (1972)

The 1972 recommendations of the Committee for Economic Development (CED) for prosecutorial reform were developed by a Research and Policy Committee whose 60 trustees represent the 200 businessmen and educators who comprise the CED.

The CED strongly advocated a centralized prosecutorial system. Major recommendations include:

> 1. A State Director of Prosecutions should be appointed in each state by the Governor or the Attorney General, under a selection process that emphasizes merit. The Director should have full administrative authority, with power to establish and enforce standards for this function, and with the resources to provide and assign the professional staff necessary to supplement or substitute for prosecutors in every state (or local) court.
>
> 2. All state and local prosecuting staffs should be placed on a nonpartisan merit basis, with appropriate compensation and tenure; staffing patterns should conform with actual caseloads and backlogs; and all staffs should be fully funded.
>
> 3. ...[H]eavy [case] backlogs in urban centers or elsewhere [should] be overcome at once through use of enough special prosecutors to assure 'speedy and public' trials; that permanent staffs be expanded to the full extent of needs; that chief prosecutors collaborate with court administrators to design improved scheduling arrangements; and that plea bargaining be subjected to close judicial scrutiny [Reducing Crime and Assuring Justice, Committee for Economic Development (1972), pp. 25-27].

H. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS (1973)

The National Advisory Commission on Criminal Justice Standards and Goals was appointed by the Administrator of the Federal Law Enforcement Assistance Administration, on October 20, 1971, to formulate for the first time national criminal justice standards and goals for crime reduction and prevention at the state and local level.

In 1973, the National Advisory Commission advocated a decentralized, collegial prosecutorial system--i.e., no expansion of state supervisory authority over local prosecution. State level entities should be established for support purposes such as laboratory assistance; special counsel, investigation and accounting. Further, the Advisory Commission recommended that state offices providing prosecutorial assistance should be an independent agency funded by the state. Policy for the agency should be established by a board or commission representing prosecutors. The Advisory Commission also advocated an increase in coordination and uniformity of prosecution functions such as screening, diversion and plea negotiation through the use of better communications between prosecutors and prosecutor organizations [National Advisory Commission on Criminal Justice Standards and Goals, "Report on Courts" (Washington D.C., U.S. Govt. Printing Office (1973), Standards 12.1-12.9].

I. NATIONAL DISTRICT ATTORNEYS ASSOCIATION (1976)

The National District Attorneys Association (NDAA), like the National Advisory Commission, supports the decentralized, collegial model and views statewide, state-funded prosecutors' organizations as the best approach to dealing with deficiencies in local resources and coordination. The NDAA also recommends full-time prosecutors and the need to redistrict states to achieve this goal. The NDAA calls upon local prosecutors to develop policies regarding various aspects of the prosecution function to achieve uniformity and consistency in the prosecutorial system. State prosecutors' organizations are seen as the focal point for coordination, mutual support and assistance to local prosecutors [National District Attorneys Association, National Prosecution Standards (1977)].

SPH:DD:DS:kja;ws

APPENDICES

INDIVIDUAL STATE DESCRIPTIONS*

APPENDIX A: ALASKA - CENTRAL

APPENDIX B: FLORIDA - REGULATORY
CONNECTICUT - REGULATORY

APPENDIX C: OKLAHOMA - DECENTRALIZED COLLEGIAL
OREGON - DECENTRALIZED COLLEGIAL

SOURCE: State and Local Prosecution and Civil Attorney Systems, U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Services, No. SD-P-2, March 1978.

*[Statutory citations: The date in parentheses at the end of a citation in a state description is the publication date of the latest bound volume of state statutes available on the date of original publication. In all cases, research reflects statutory changes through 1981.]

APPENDIX A: ALASKA - CENTRAL

ALASKA

The following prosecution and civil attorney agencies exist in Alaska: The State Department of Law and the offices of the district attorneys, the borough attorneys, and the city attorneys.

STATE DEPARTMENT OF LAW (1)

Legal Authorization. The Alaska Statutes, Title 44, Section 44.23.010 (1973), establish the Office of Attorney General as head of the State Department of Law.

Organization. The State Department of Law consists of a civil division and a criminal division.

Legal Jurisdiction. The Attorney General represents the State in all civil actions at the trial and appellate levels in which the State is a party. The Attorney General has supervisory authority over the district attorneys who handle adult and juvenile criminal prosecutions at the trial and appellate level. The Attorney General is also the legal advisor of the Governor and other State officers.

Personnel.

Attorney General. The Attorney General is appointed by the Governor and is subject to confirmation by a majority of the members of the legislature in joint session. The Attorney General receives a salary and may not engage in the private practice of law.

Deputy and Assistant Attorneys General. The Attorney General appoints such deputy attorneys general and assistant attorneys general as provided by law. They receive salaries and may not engage in the private practice of law.

Other Personnel. In addition to attorneys, the State Department of Law employs investigators and legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the State Department of Law.

DISTRICT ATTORNEYS (6)

Legal Authorization. The Attorney General has delegated responsibility for criminal prosecutions to the district attorneys.

Organization. There are six district attorney offices under the supervision of the criminal division of the State Department of Law. There are two district attorney's offices in the first judicial district; they are located in Anchorage and Kenai. There is one district attorney's office that is located in Nome in the second judicial district. The third district has two suboffices that are located in Kodiak and Bethel. There is one district attorney's office that is located in Fairbanks in the fourth judicial district.

Legal Jurisdiction. The district attorneys prosecute all violations of State law at the trial and appellate levels. In addition, the district attorneys prosecute juvenile cases.

Personnel.

District Attorneys. District attorneys are appointed by the Attorney General. They receive salaries and may not engage in the private practice of law.

Assistant District Attorneys. Each district attorney, with the consent of the State Department of Law's criminal division, appoints assistant district attorneys. They receive salaries and may not engage in the private practice of law.

Other Personnel. In addition to attorneys, district attorneys employ legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the district attorney's offices.

BOROUGH ATTORNEYS (8)[1]

Legal Authorization. Various borough ordinances establish the borough attorney's office.

Organization. There is a borough attorney's office in each of the 8 boroughs in Alaska.

Legal Jurisdiction. The borough attorneys prosecute minor criminal cases at the trial level and represent their respective boroughs in civil lawsuits. They provide legal services to the borough.

Personnel.

Borough Attorneys. Each borough attorney is appointed by the borough assembly. Each receives a salary and may or may not engage in the private practice of law, depending upon the respective borough.

Other Personnel. Borough attorneys usually employ a small number of secretarial-clerical personnel.

Financial Support. Each borough is responsible for financing its borough attorney's office.

CITY ATTORNEYS (24)[2]

Legal Authorization. Various city ordinances authorize the city attorney's office.

Organization. Each city in Alaska may appoint a city attorney. The size of the city usually determines whether it will employ a city attorney. Large cities appoint city attorneys, medium-size cities use general contracts with private attorneys and small cities employ no legal counsel.

Legal Jurisdiction. The city attorney represents the municipality in minor criminal and civil proceedings involving violators of local ordinances. The city attorney may act as legal advisor to the council or assembly, the school board, and the other officers of the municipality.

Personnel.

City Attorneys. The city attorney is appointed by the chief administrator, subject to confirmation by the governing body. The municipality determines the method of compensation; however, most city attorneys are part-time, receive a salary and engage in the private practice of law.

Other Personnel. City attorneys usually employ a small number of secretarial-clerical personnel.

Financial Support. Each city is responsible for financing its city attorney.

---

[1] Although the city-borough consolidated governments of Greater Juneau-Juneau and Greater Sitka-Sitka are treated in this report as a municipal government, the borough attorneys for the consolidated governments perform the same functions as other borough attorneys.

[2] The independent city of Anchorage is included in this number.

APPENDIX B: FLORIDA - REGULATORY

FLORIDA

The following prosecution and civil attorney agencies exist in Florida: The Department of Legal Affairs and the offices of the State's attorneys, county attorneys, and municipal attorneys.

DEPARTMENT OF LEGAL AFFAIRS (1)

Legal Authorization. The Florida Statutes, Chapter 20, Section 20.11 (1975), establishes the Attorney General as head of the Department of Legal Affairs.

Organization. The Department of Legal Affairs consists of five divisions: Criminal appeals, field investigation, cabinet affairs, general legal services, and administrative.

Legal Jurisdiction. The Department of Legal Affairs and the Attorney General represent the State in all appellate-level criminal and civil cases. The Attorney General is the chief legal officer of the State with supervisory authority over the State's attorneys.

Personnel.

Attorney General. The Attorney General is elected by the voters of the State for a term of 4 years. To qualify for the office, candidates must have practiced law in the State for at least 5 years. The Attorney General receives a salary and may not engage in the private practice of law.

Deputy and Assistant Attorneys. The Attorney General appoints one deputy attorney general and such assistant attorneys as are deemed necessary. They receive salaries and may not engage in the private practice of law.

Other Personnel. In addition to attorneys, the Department of Legal Affairs employs investigators and legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the Department of Legal Affairs.

STATE'S ATTORNEYS (20)

Legal Authorization. The Constitution of Florida, Article V, Section 17 (1975), establishes the State's attorneys' offices.

Organization. The State is divided into 20 judicial circuits. Each circuit consists of one to seven counties. There is a State's attorney's office in each circuit.

Legal Jurisdiction. On behalf of the State, the State's attorneys prosecute all trial-level criminal and civil cases in which the State is a party, In addition, the State's attorneys handle all juvenile matters.[1]

Personnel.

State's Attorneys. Voters in each circuit elect a State's attorney for a term of 4 years. To qualify for the office, candidates must have practiced law in the State for at least 5 years. The State's attorneys receive salaries and may not engage in the private practice of law.

Assistant State's Attorneys. State's attorneys may appoint such assistants as provided by law. They receive salaries and may or may not engage in the private practice of law, depending upon the regulations of the judicial circuit they serve.

Other Personnel. In addition to attorneys, the State's attorneys employ investigators and legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the salaries and most expenses of the State's attorneys' offices. The counties within the respective judicial circuit are responsible for financing office expenses such as office space, utilities, etc.

COUNTY ATTORNEYS (15)

Legal Authorization. The Florida Statutes, Chapter 125, Section 125.012 (15) (1975), establishes the position of county attorney.

Organization. There may be a county attorney's office in each county in the State.

Legal Jurisdiction. The county attorneys principally represent the county in civil lawsuits and provide legal services to their respective county governments.

Personnel.

County Attorneys. The board of county commissioners appoints the county attorney. The types of compensation for county attorneys vary from county to county, as do the regulations regarding the private practice of law.

Other Personnel. County attorneys employ secretarial-clerical personnel.

Financial Support. The county is responsible for financing its county attorney's office.

MUNICIPAL ATTORNEYS (249)[2]

Legal Authorization. Various municipal charters authorize the establishment of the positions of city, town, and village attorneys.

Organization. Each municipality may employ an attorney.

Legal Jurisdiction. Municipal attorneys prosecute violations of municipal ordinances. They represent their municipality in civil actions and provide legal services to municipal officials.

Personnel.

Attorneys. The city commission or council appoints the city or village attorney. The town commissioner appoints the town attorney. Candidates for the office of municipal attorney must meet requirements set by the individual charters. Most attorneys are part-time employees who receive salaries or fees and may engage in the private practice of law.

Other Personnel. The municipal attorneys generally work alone but larger offices may employ investigators and legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. Each city, town, or village is responsible for financing its attorney's office.

[1] As of January 1977, municipal courts in Florida were abolished and their caseload transferred to the county courts. The State's attorney's offices have assumed the responsibility of prosecuting violations of municipal ordinances.

[2] The city-county consolidated government of Jacksonville-Duval is treated in this report as a municipal government.

APPENDIX B: CONNECTICUT - REGULATORY

CONNECTICUT

The following prosecution and civil attorney agencies exist in Connecticut: The Office of the Attorney General, Office of the Chief State's Attorney, and the offices of the State's attorneys and prosecuting attorneys.

OFFICE OF THE ATTORNEY GENERAL (1)

Legal Authorization. The General Statutes of Connecticut, Title 3, Section 3-124 (1975), establishes the Office of the Attorney General.

Organization. The Office of the Attorney General consists of two units: workman's compensation and anti-trust.

Legal Jurisdiction. The Attorney General has general supervision over all legal matters in which the State is involved. The Attorney General represents the State in civil actions and acts as legal advisor to any executive department.

Personnel.

Attorney General. The Attorney General is elected by the voters of the State for a term of 4 years. To qualify for the office, candidates must have practiced law in the State for at least 10 years. The Attorney General receives a salary and may not engage in the private practice of law.

Deputy and Assistant Attorneys General. The Attorney General appoints the deputy and assistant attorneys general. They receive salaries and may not engage in the private practice of law.

Other Personnel. In addition to attorneys, the Office of the Attorney General employs legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the Office of the Attorney General.

OFFICE OF THE CHIEF STATE'S ATTORNEY (1)

Legal Authorization. The General Statutes of Connecticut, Title 51, Section 51-278 (1975), establishes the Office of the Chief State's Attorney.

Organization. The Office of the Chief State's Attorney is located within the Division of Criminal Justice, Judicial Department.

Legal Jurisdiction. The chief State's attorney has administrative authority over the State's attorneys and prosecuting attorneys. The chief State's attorney directs and coordinates the programs of the Division of Criminal Justice and supervises the investigation and prosecution of criminal matters in the Court of Common Pleas, which is a court of limited criminal jurisdiction. Under special circumstances, the chief State's attorney or deputy may be requested to represent the State in criminal actions in lieu of any State's attorney.

Personnel.

Chief State's Attorney. The chief State's attorney is appointed by the judges of the Superior Court and serves for a term of 4 years. To qualify for the office, candidates must have practiced law for at least 3 years preceding the appointment. The chief State's attorney receives a salary and may not engage in the private practice of law.

Deputy Chief State's Attorney. The deputy chief State's attorney is appointed by the judges of the Superior Court and serves for a term of 4 years. To qualify for the office, candidates must have practiced law for at least 3 years preceding the appointment. The deputy chief State's attorney receives a salary and may not engage in the private practice of law.

Other Personnel. In addition to attorneys, the Office of the chief State's attorney employs investigators and administrative-supervisory and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the Office of the chief State's attorney.

STATES ATTORNEYS (9)*

Legal Authorization. The General Statutes of Connecticut, Title 51, Section 51-278 (1975), establishes the office of State's Attorney.

Organization. There are nine States attorneys, one in each of the eight counties in the State and one in the Judicial District of Waterbury.

Legal Jurisdiction. The State's attorneys prosecute felonies and conduct felony preliminaries in the Superior Court which is a court of general jurisdiction. The State's attorneys also prosecute appeals from juvenile courts.

Personnel.

State's Attorneys. The State's attorneys are appointed by the judges of the Superior Court and serve for a term of 4 years. To qualify for the office, candidates must have practiced law for 3 years preceding the appointment. The State's attorneys receive salaries and may not engage in the private practice of law.

Assistant State's Attorneys. The assistant State's attorneys are appointed by the judges of the Superior Court and serve for a term of 4 years. To qualify for the office, candidates must have practiced law for 3 years preceding the appointment. The assistant State's attorneys receive salaries. Full-time employees may not engage in the private practice of law; part-time assistants may engage in the private practice of law providing it is not criminal work in the Superior Court.

Other Personnel. In addition to attorneys, the State's attorneys employ investigators and administrative-supervisory and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the State's attorneys' offices.

(continued)

*Connecticut is now organized into 12 judicial districts; a state's attorney is appointed by Superior Court judges for each district [ss. 51-278 (b) and 51-344, Gen. Stats. (1981)].

PROSECUTING ATTORNEYS (21)

Legal Authorization. The General Statutes of Connecticut, Title 51, Section 51-282 (1975), establishes the office of prosecuting attorney.

Organization. The State is divided into 19 geographical areas, which are established within the eight counties, and the judicial district of Waterbury. There are 21 prosecuting attorney's offices in the State; 17 geographical areas have one prosecuting attorney's office and two geographical areas have two prosecuting attorneys' offices.

Legal Jurisdiction. The prosecuting attorneys prosecute trial- and appellate-level offenses for which the punishment does not exceed a fine of $1,000 and/or imprisonment of not more than 1 year.

Personnel.

Prosecuting Attorneys. Each prosecuting attorney is appointed by the judges of the Court of Common Pleas and serves for a term of 4 years. To qualify for the office, candidates must have practiced law in the State for 3 years preceding the appointment. They receive salaries and may not engage in the private practice of law if they are full-time employees.

Assistant Prosecuting Attorneys. Assistant prosecuting attorneys are appointed by the judges of the Court of Common Pleas and serve 4-year terms. They receive salaries and may not engage in the private practice of law if they are full-time employees.

Other Personnel. In addition to attorneys, the prosecuting attorney's offices employ investigators and legal service and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the prosecuting attorney's offices.

APPENDIX C: OKLAHOMA - DECENTRALIZED COLLEGIAL

OKLAHOMA

The following prosecution and civil attorney agencies exist in Oklahoma: The Office of the Attorney General and the offices of the district attorneys and city and town attorneys.

OFFICE OF THE ATTORNEY GENERAL (1)

Legal Authorization. The Constitution of Oklahoma, Article 6, Section 1 and the Oklahoma Statutes, Title 74, Section 18 (1971), establishes the Office of the Attorney General.

Organization. The Office of the Attorney General consists of three divisions: Civil, consumer protection, and criminal.

Legal Jurisdiction. On behalf of the State, the Attorney General prosecutes appellate-level criminal cases. The Attorney General represents the State in civil lawsuits and provides legal services to agencies and officials.

Personnel.

Attorney General. The Attorney General is elected by the voters of the State for a term of 4 years. The Attorney General receives a salary and may engage in the private practice of law.

Assistant Attorney General. The Attorney General appoints a first assistant attorney general and as many assistants as deemed necessary. They receive salaries and may engage in the private practice of law.

Other Personnel. In addition to attorneys, the Office of the Attorney General employs legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the Office of the Attorney General.

DISTRICT ATTORNEYS (27)

Legal Authorization. The Oklahoma Statutes, Title 19, Section 215.1 (1971), establishes the position of district attorney.

Organization. The State is divided into 27 judicial districts. Each district consists of one to six counties. There is a district attorney for each district.

Legal Jurisdiction. On behalf of the State, the district attorneys prosecute felony and misdemeanor cases at the trial level. The district attorneys represent the district in civil lawsuits and provide legal services to county officials and agencies within their district. In addition, the district attorneys handle juvenile matters.

Personnel.

District Attorneys. Each district attorney is elected by the voters of the district for a term of 2 years. To qualify for the office, the district attorneys must have 3 years experience as a practicing attorney. The district attorneys receive salaries and may not engage in the private practice of law.

Assistant District Attorneys. The district attorney appoints the assistant district attorney. They receive salaries and may only engage in the private practice of law if they are part-time employees.

Other Personnel. In addition to attorneys, the district attorneys employ investigators and legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The salaries of the district attorney and assistant district attorney are paid by the State. The salaries of the other personnel and office expenses are paid by the counties within the district.

CITY AND TOWN ATTORNEYS (74)

Legal Authorization. The Oklahoma Statutes, Title 11, Section ~~633 (1971),~~* establishes the position of city attorney. Various town charters and ordinances authorize the position of town attorneys.

Organization. Each municipality may employ an attorney.

Legal Jurisdiction. The city and town attorneys (also referred to as municipal counselors) prosecute municipal ordinance and traffic violations, represent the municipality in civil lawsuits, and provide legal services to municipal officials and agencies.

Personnel.

Attorneys. The city or town attorney is appointed by the mayor with the consent of the city or town council. Most municipal attorneys are part-time, receive salaries and/or fees, and may or may not engage in the private practice of law depending upon the regulations of the municipality.

Other Personnel. The city or town attorney usually works alone or employs a secretarial-clerical or legal service employee. However, larger offices also have administrative-supervisory personnel.

Financial Support. Each municipality is responsible for financing its city or town attorney's office.

---

*Sections 11-117 and 27-108 [Ch. 256, Laws of 1977].

APPENDIX C: OREGON - DECENTRALIZED COLLEGIAL

OREGON

The following prosecution and civil attorney agencies exist in Oregon: The State Department of Justice and the offices of the district attorneys and city attorneys.

STATE DEPARTMENT OF JUSTICE (1)

Legal Authorization. The Oregon Revised Statutes, Chapter 180, Section 180.210 (1975), establishes the Attorney General as head of the State Department of Justice.

Organization. The State Department of Justice consists of eight divisions: Antitrust, appellate, consumer protection, criminal justice-special investigations, general counsel, tax, support enforcement, and trial.

Legal Jurisdiction. The State Department of Justice and the Attorney General have supervisory authority over all legal actions and proceedings in which the State is a party. The Attorney General provides trial assistance to the district attorneys and shares responsibility for prosecuting appellate-level criminal cases with the district attorneys. The Attorney General represents the State in civil lawsuits and provides legal services to State agencies and officials.

Personnel.

Attorney General. The Attorney General is elected by the voters of the State for a term of 4 years. The Attorney General receives a salary and may not engage in the private practice of law.

Assistant Attorneys General. The Attorney General appoints one deputy attorney general, one solicitor general, and as many assistants as deemed necessary. They receive salaries and may not engage in the private practice of law.

Other Personnel. In addition to attorneys, the State Department of Justice employs investigators and legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The State is responsible for financing the State Department of Justice.

DISTRICT ATTORNEYS (36)

Legal Authorization. The Oregon Revised Statutes, Title 8, Section 8.610 (1975), establishes the position of district attorney.

Organization. There is a district attorney's office in each of the 36 counties in the State.

Legal Jurisdiction. The district attorneys prosecute criminal cases at the trial and appellate levels. The district attorneys represent the county in civil lawsuits and provide legal services to county officials and agencies. In addition, the district attorneys handle juvenile matters.

Personnel.

District Attorneys. The district attorney is elected by the voters of the county for a term of 4 years. To qualify for the office, candidates must have been admitted to practice law before the Supreme Court of the State. The district attorneys receive salaries and may not engage in the private practice of law if their salary exceeds $16,000 a year.

Deputy District Attorneys. The district attorney appoints the deputy district attorney. To qualify for the office, candidates must have been admitted to practice law before the Supreme Court of the State. Deputy district attorneys receive salaries and may not engage in the private practice of law if their salary exceeds $16,000 a year.

Other Personnel. In addition to attorneys, the district attorneys employ investigators and legal service, administrative-supervisory, and secretarial-clerical personnel.

Financial Support. The State and each county within a district are responsible for financing the district attorney's office. The salaries of the district attorneys are paid by the State and may be supplemented by the counties. Office expenses and salaries of other personnel are paid by the counties.

CITY ATTORNEYS (48)

Legal Authorization. Various municipal charters and ordinances authorize the establishment of the position of city attorney.

Organization. Each municipality may employ a city attorney, sometimes called city prosecutor.

Legal Jurisdiction. The city attorneys prosecute municipal ordinance and traffic violations, represent the municipality in civil lawsuits, and provide legal services to city officials and agencies.

Personnel.

City Attorneys. The city attorney is appointed by the city council. Most are part-time, receive salaries and/or fees, and may or may not engage in the private practice of law depending upon the regulations of the municipality.

Other Personnel. The city attorney usually works alone or employs a secretarial-clerical employee. However, larger offices may also have investigators and legal services personnel.

Financial Support. Each municipality is responsible for financing its city attorney's office.

END